

# The Gazette of India

## EXTRAORDINARY PART II—Section 2

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**No. 51] NEW DELHI, THURSDAY, SEPTEMBER 30, 1954**

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#### **LOK SABHA**

The following Bills were introduced in the Lok Sabha on 30th September, 1954:—

BILL\* No. 47 OF 1954

*A Bill to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission.*

BE it enacted by Parliament in the Fifth Year of the Republic of India as follows:—

#### **CHAPTER I**

##### **PRELIMINARY**

**1. Short title and commencement.**—(1) This Act may be called the University Grants Commission Act, 1954.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

(a) “Commission” means the University Grants Commission established under section 4;

(b) “executive authority”, in relation to a University, means the chief executive authority of the University (by whatever name called) in which the general administration of the University is vested;

(c) “Fund” means the University Grants Commission Fund constituted under section 16;

(d) “member” means a member of the University Grants Commission and includes the Chairman;

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\*The President has, in pursuance of clause (3) of article 117 of the Constitution of India, recommended to the Lok Sabha the consideration of the Bill.

(e) "prescribed" means prescribed by rules made under this Act;

(f) "University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any institution recognised as a constituent college of a University under any such Act.

**3. Application of Act to institutions for higher studies other than Universities.**—The Central Government may, on the advice of the Commission, declare, by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of section 2.

## CHAPTER II

### ESTABLISHMENT OF THE COMMISSION

**4. Establishment of the Commission.**—(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established a Commission by the name of the University Grants Commission.

(2) The said Commission shall be a body corporate having perpetual succession and a common seal, and shall by the said name sue and be sued.

**5. Composition of the Commission.**—(1) The Commission shall consist of such number of members, not exceeding nine, as the Central Government may think fit to appoint.

(2) The members shall be chosen as follows:—

(a) not less than one-third of the number of members shall be chosen from among the Vice-Chancellors of Universities and heads of institutions deemed to be Universities under section 3;

(b) not less than two members shall be chosen from among the officers of the Central Government to represent that Government; and

(c) the remaining number shall be chosen from among persons who are educationists of repute or who have obtained high academic distinctions or who have experience in administrative or financial matters.

(3) The Central Government shall nominate a member of the Commission to be the Chairman thereof.

(4) Every appointment under this section shall take effect as soon as it is notified by the Central Government in the Official Gazette.

**6. Terms and conditions of service of members.**—(1) Every member shall, unless his appointment is terminated earlier by the Central Government, hold office for a period of six years:

Provided that out of the members (other than the Chairman and the members representing the Central Government) appointed for the first time under this section, as nearly as possible, one-half of the members shall retire, as soon as may be, on the expiration of the third year in accordance with such procedure as may be prescribed, and the vacancies so caused shall be filled by fresh appointment.

(2) A member may resign his office by writing under his hand addressed to the Central Government, but he shall continue in office until his resignation is accepted by the Central Government.

(3) A casual vacancy created by the resignation of a member under sub-section (2) or for any other reason shall be filled by fresh appointment.

(4) The office of the Chairman shall be a whole-time and salaried one and subject thereto, the terms and conditions of service of the Chairman and other members shall be such as may be prescribed.

**7. Meetings of the Commission.**—The Commission shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by regulations made under this Act.

**8. Vacancies amongst members or defect in constitution not to invalidate acts or proceedings of the Commission.**—No act or proceedings of the Commission shall be deemed to be invalid by reason merely of any vacancy in, or any defect in the constitution of, the Commission.

**9. Temporary association of persons with the Commission for particular purposes.**—(1) The Commission may associate with itself, in such manner and for such purposes as may be determined by regulations made under this Act, any person whose assistance or advice it may desire in carrying out any of the provisions of this Act.

(2) A person associated with it by the Commission under sub-section (1) for any purpose shall have a right to take part in the discussions relevant to that purpose, but shall not have a right to vote at a meeting of the Commission, and shall not be a member for any other purpose.

**10. Staff of the Commission.**—Subject to such rules as may be made by the Central Government in this behalf, the Commission may, for the purpose of enabling it to efficiently perform its functions or exercise its powers under this Act, appoint a Secretary and such number of other employees as it may think fit and determine their functions and conditions of service.

**11. Authentication of orders and other instruments of the Commission.**—All orders and decisions of the Commission shall be authenticated by the signature of the Chairman or any other member authorised by the Commission in this behalf, and all other instruments issued by the Commission shall be authenticated by the signature of the Secretary or any other officer of the Commission authorised in like manner in this behalf.

### CHAPTER III

#### POWERS AND FUNCTIONS OF THE COMMISSION

**12. Functions of the Commission.**—It shall be the general duty of the Commission to take all such steps as it may think fit for the

co-ordination and determination of standards of teaching and examination in Universities, and for the purpose of effectively discharging its functions under this Act, the Commission may—

- (a) inquire into the financial needs of Universities;
- (b) allocate and disburse, out of the Fund of the Commission, grants to Universities for any general or specified purpose:

Provided that in making any such grant to a University, the Commission shall give due consideration to the development of the University concerned, its financial needs, the standard attained by it and the national purpose which it may be called upon to serve;

- (c) recommend to any University the measures necessary for the reform and improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation;

- (d) advise the Central Government or any State Government<sup>†</sup> on the allocation of any grants to Universities for any general or specified purpose out of the Consolidated Fund of India or the Consolidated Fund of the State, as the case may be;

- (e) act as an expert body to advise the Central Government on problems connected with the co-ordination of facilities and the maintenance of standards in Universities;

- (f) advise any authority, if such advice is asked for, on the establishment of a new University or on proposals connected with the expansion of the activities of any University;

- (g) advise the Central Government or a State Government in regard to the recognition of any degree, diploma or certificate conferred or granted by any University or other authority for the purpose of employment under the Central Government or the State Government or for any other purpose;

- (h) advise the Central Government or any University on any question which may be referred to the Commission by the Central Government or the University, as the case may be;

- (i) require any University to furnish it with such information as may be needed relating to the financial position of the University or the classes of studies in the various branches of learning taught in that University, together with all the rules and regulations relating to the standards of teaching and examination in that University respecting each of such branches of learning;

- (j) perform such other functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of above functions.

**13. Inspection.**—(1) For the purpose of effectively discharging its functions under this Act, the Commission may, in consultation with any person or authority responsible for the inspection of a University under any law for the time being applicable to the University, cause an inspection to be made, by such person or persons as it may direct, of the University, its laboratories and equipment or of any institution maintained by the University and also of the examinations,

teaching or other work conducted or done by the University and may cause an inquiry to be made in like manner in respect of any matter connected therewith.

(2) The Commission shall, before causing any inspection or inquiry to be made under sub-section (1), give notice to the University through the executive authority of the University of its intention of causing an inspection or inquiry to be made and the University shall be entitled to be represented at such inspection or inquiry.

(3) The Commission shall communicate to the University its views in regard to the results of any such inspection or inquiry and may, after ascertaining the opinion of the University, recommend to the University the action to be taken as a result of such inspection or inquiry.

(4) The executive authority of the University shall report to the Commission the action, if any, which is proposed to be taken for the purpose of implementing any such recommendation as is referred to in sub-section (3).

**14. Consequences of failure of Universities to comply with recommendations of the Commission.**—If any University fails within a reasonable time to comply with any recommendation made by the Commission under section 12 or section 13, the Commission, after taking into consideration the cause, if any, shown by the University for its failure to comply with such recommendation, may withhold from the University the grants proposed to be made out of the Fund of the Commission, and also advise the Central Government or the State Government to withhold its grants from that University or to take such other action in respect of that University as the Government may deem proper.

**15. Payment to the Commission.**—The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Commission in each financial year such sums as may be considered necessary for the performance of the functions of the Commission under this Act.

**16. Fund of the Commission.**—(1) The Commission shall have its own Fund; and all sums which may, from time to time, be paid to it by the Central Government and all the receipts of the Commission (including any sum which any State Government or any other authority or person may hand over to the Commission) shall be carried to the Fund and all payments by the Commission shall be made therefrom.

(2) All moneys belonging to the Fund shall be deposited in such banks or invested in such manner as may, subject to the approval of the Central Government, be decided by the Commission.

(3) The Commission may spend such sums as it thinks fit for performing its functions under this Act, and such sums shall be treated as expenditure payable out of the Fund of the Commission.

**17. Budget.**—The Commission shall prepare, in such form and at such time each year as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure, and copies thereof shall be forwarded to the Central Government.

**18. Reports.**—The Commission shall prepare, twice every year in such form and at such times as may be prescribed, a six-monthly report giving a true and full account of its activities during the previous six months, and copies thereof shall be forwarded to the Central Government.

**19. Account and audit.**—(1) The Commission shall cause to be maintained such books of account and other books in relation to its account in such form and in such manner as may, in consultation with the Comptroller and Auditor-General of India, be prescribed.

(2) The Commission shall, as soon as may be after closing its annual accounts, prepare a statement of accounts in such form, and forward the same to the Comptroller and Auditor-General by such date, as the Central Government may, in consultation with the Comptroller and Auditor-General, determine.

(3) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such times and in such manner as he thinks fit.

(4) The annual accounts of the Commission together with the audit report thereon shall be forwarded to the Central Government and the Government shall cause the same to be laid before both Houses of Parliament and shall also forward a copy of the audit report to the Commission for taking suitable action on the matters arising out of the audit report.

#### CHAPTER IV

##### MISCELLANEOUS

**20. Directions by the Central Government.**—(1) In the discharge of its functions under this Act, the Commission shall be guided by such directions on questions of policy as may be given to it by the Central Government.

(2) If any dispute arises between the Central Government and the Commission as to whether a question is or is not a question of policy, the decision of the Central Government shall be final.

**21. Returns and information.**—The Commission shall furnish to the Central Government such returns or other information with respect to its property or activities as the Central Government may, from time to time, require.

**22. Right to confer degrees.**—(1) The right of conferring or granting degrees shall be exercised only by a University as defined in section 2 or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself out as entitled to confer or grant, any degree.

**23. Prohibition of the use of the word 'University' in certain cases.**—No institution, whether a corporate body or not, other than a University as defined in section 2 shall be entitled to have the word 'University' associated with its name in any manner whatsoever.

**24. Penalties.**—Whoever contravenes the provisions of section 22 or section 23 shall be punishable with fine which may extend to

one thousand rupees, and if the person contravening is an association or other body of individuals, every member of such association or other body who knowingly or wilfully authorises or permits the contravention shall be punishable with fine which may extend to one thousand rupees.

**25. Commission need not be consulted in certain matters.**—Nothing contained in this Act shall be deemed to render it obligatory on the part of the Central Government to consult the Commission respecting grants-in-aid from the Consolidated Fund of India to institutions whose annual budgets do not form an integral part of the budget of any University.

**26. Power to make rules.**—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the procedure for the retirement of members under section 6;

(b) the terms and conditions of service of members of the Commission;

(c) the terms and conditions of service of employees appointed by the Commission;

(d) the additional functions which may be performed by the Commission under clause (j) of section 12;

(e) the returns and information which are to be furnished by Universities in respect of their financial position or standards of teaching and examination maintained therein;

(f) the inspection of Universities;

(g) the form and manner in which the budget and reports are to be prepared by the Commission;

(h) the manner in which the accounts of the Commission are to be maintained;

(i) the form and manner in which returns or other information are to be furnished by the Commission to the Central Government;

(j) any other matter which has to be, or may be, prescribed.

**27. Power to make regulations.**—The Commission may, subject to the previous approval of the Central Government, make regulations consistent with this Act and the rules made thereunder,—

(a) regulating the meetings of the Commission and the procedure for conducting business thereat;

(b) regulating the manner in which and the purposes for which persons may be associated with the Commission under section 9;

(c) specifying the terms and conditions of service of the employees appointed by the Commission;

(d) defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of

the University, having regard to the branch of education in which he is expected to give instruction;

(e) defining the minimum standards of instruction for the grant of any degree by any University;

(f) regulating the maintenance of standards and the co-ordination of work or facilities in Universities.

#### STATEMENT OF OBJECTS AND REASONS

The Constitution of India vests Parliament with exclusive authority in regard to "co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions". It is obvious that neither co-ordination nor determination of standards is possible unless the Central Government has some voice in the determination of standards of teaching and examination in Universities, both old and new. It is also necessary to ensure that the available resources are utilised to the best possible effect. The problem has become more acute recently on account of the tendency to multiply Universities. The need for a properly-constituted Commission for determining and allocating to Universities funds made available by the Central Government has also become more urgent on this account.

2. It is therefore proposed to establish a University Grants Commission as a corporate body which will inquire into the financial needs of Universities and allocate and disburse grants to Universities for any general or specified purpose. The Commission will also have the power to recommend to any University the measures necessary for the reform and improvement of University education and to advise the University concerned upon the action to be taken for the purpose of implementing such recommendation. The Commission will act as an expert body to advise the Central Government on problems connected with the co-ordination of facilities and maintenance of standards in Universities. The Commission, in consultation with the University concerned, will also have the power to cause an inspection or inquiry to be made of any University established by law in India and to advise the University on any matter which has been the subject of an inquiry or inspection. The Commission shall also advise, whenever such advice is sought, on the establishment of new Universities.

3. The Bill also seeks to restrict the use of the word 'University' or the power to confer degrees, etc., to institutions established as such by law in India or to institutions empowered to do so by an Act of Parliament and provides a penalty for contravention of these provisions by an individual or a corporate body.

4. While the provisions of the Bill do not apply to institutions of higher education which are not Universities, power is vested in the Central Government to declare any institution for higher education to be a University for the purposes of this Bill by issuing a notification in the Official Gazette.

NEW DELHI;

*The 24th September, 1954.*

A. K. AZAD.



**9. Amendment of section 140, Act VIII of 1878.**—In section 140 of the principal Act, for the proviso in the second paragraph, the following proviso shall be substituted, namely:—

“Provided that no such refund shall be allowed unless a claim therefor is made within three months of the date on which the said vessel left the port.”

**10. Amendment of section 167, Act VIII of 1878.**—In the Schedule to section 167 of the principal Act,—

(a) after item 76, the following items shall be inserted, namely:—

“76A. If any person resists or refuses to allow a radiologist to screen or take X-ray pictures of his body in accordance with an order made by a Magistrate.	170A	Such person shall on conviction before a Magistrate be liable to imprisonment for any term not exceeding six months, or to fine, or to both.
76B. If any person resists or refuses to allow suitable action being taken on the advice and under the supervision of a registered medical practitioner for bringing out any dutiable, or prohibited goods secreted inside his body.	170A	Such person shall on conviction before a Magistrate be liable to imprisonment for any term not exceeding six months, or to fine, or to both.”

(b) in item 80, in the entry in the first column, for the words and figures “without the approval of the Customs-collector under section 202”, the words and figures “without being in possession of a valid licence required under section 202” shall be substituted;

(c) after item 80, the following item shall be inserted, namely:—

“81. If any person knowingly, and with intent to defraud the Government of any duty payable thereon, or to evade any prohibition or restriction for the time being in force under or by virtue of this Act with respect thereto, acquires possession of, or is in any way concerned in carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any goods which have been unlawfully removed from a warehouse or which are chargeable with a duty which has not been paid or with respect to the importation or exportation of which any prohibition or restriction is for the time being in force as aforesaid; or	General	Such person shall on conviction before a Magistrate be liable to imprisonment for any term, not exceeding two years, or to fine, or to both.”
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If any person is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any such prohibition or restriction as aforesaid or of any provision of this Act applicable to those goods.

**11. Insertion of new section 170A in Act VIII of 1878.**—After section 170 of the principal Act, the following section shall be inserted, namely:—

*“170A. Power to screen or X-ray bodies of persons for detecting secreted goods.—(1) Where any officer of Customs duly employed in the prevention of smuggling has reason to believe that any person on board of any vessel in any port in India or any person who has landed from any vessel has any dutiable, or prohibited goods secreted inside his body, such officer of Customs may detain such person until he can bring him before the nearest Magistrate.*

*(2) A Magistrate before whom any person is brought under sub-section (1) shall, if he sees no reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person.*

*(3) Where any such Magistrate has reasonable ground for believing that such person has any such goods secreted inside his body and the Magistrate is satisfied that for the purpose of discovering such goods it is necessary to have the body of such person screened or X-rayed, he may make an order to that effect.*

*(4) Where a Magistrate has made any order under sub-section (3) in relation to any person, any officer of Customs duly employed in the prevention of smuggling shall, as soon as practicable, take such person before a radiologist possessing qualifications recognized by the Central Government for the purpose of this section, and such person shall allow the radiologist to screen or X-ray his body.*

*(5) A radiologist before whom any person is brought under sub-section (4) shall after screening or X-raying the body of such person forward his report, together with any X-ray pictures taken by him, to the Magistrate without any unnecessary delay.*

*(6) Where on receipt of a report from a radiologist under sub-section (5) or otherwise, the Magistrate is satisfied that any person has any dutiable or prohibited goods secreted inside his body, he may direct that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner and such person shall be bound to comply with such direction:*

*Provided that in the case of a female no such action shall be taken except on the advice and under the supervision of a female registered medical practitioner.*

*(7) Where any person is brought before a Magistrate under this section, such Magistrate may for the purpose of enforcing the provisions of this section order such person to be kept in such custody and for such time as he may direct.*

**(8) Any expenditure incurred for the purpose of enforcing the provisions of this section (including any fees payable to a radiologist or a registered medical practitioner) shall be defrayed out of moneys provided by Parliament.**

(9) Nothing in this section shall apply to any person referred to in sub-section (1), who admits that dutiable or prohibited goods are secreted inside his body, and who voluntarily submits himself for suitable action being taken for bringing out such goods.

*Explanation.*—For the purposes of this section, the expression “registered medical practitioner” means any person who holds a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (VII of 1916), or notified under section 3 of that Act, or by an authority specified in any of the Schedules to the Indian Medical Council Act, 1933 (XXVII of 1933).”

**12. Insertion of new section 171A in Act VIII of 1878.**—After section 171 of the principal Act, the following section shall be inserted, namely:—

“171A. *Power of officers of Customs to summon persons to give evidence and produce documents.*—(1) Any duly empowered officer of Customs or other person duly employed in the prevention of smuggling shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer or person is making in connection with the smuggling of any goods.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(3) All persons so summoned shall be bound to attend either in person or by an authorized agent, as such officer or other person may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required:

Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 (Act V of 1908) shall be applicable to any requisition for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (Act XLV of 1860).

**13. Amendment of section 172, Act VIII of 1878.**—In section 172 of the principal Act,—

(a) after the words “prohibited goods”, the words “or any documents relating to such goods” shall be inserted, and

(b) after the words “to search for such goods”, the words “or documents” shall be inserted.

**14. Insertion of new section 178A in Act VIII of 1878.**—After sec-

tion 178 of the principal Act, the following section shall be inserted, namely:—

“178A. *Burden of proof.*—Where any goods are seized under this Act on the ground that they are smuggled goods, the burden of proving that the goods are not smuggled goods shall be on the person from whose possession the goods are seized.”

**15. Insertion of new section 187A in Act VIII of 1878.**—After section 187 of the principal Act, the following section shall be inserted, namely:—

“187A. *Cognizance of offences.*—No court shall take cognizance of any offence relating to smuggling of goods punishable under item 81 of the Schedule to section 167, except upon complaint in writing, made by the Chief Customs-officer or any other officer of Customs not lower in rank than an Assistant Collector of Customs authorized in this behalf by the Chief Customs-officer.”

**16. Insertion of new section 190A in Act VIII of 1878.**—After section 190 of the principal Act, the following section shall be inserted, namely:—

“190A. *Powers of revision of Chief Customs-authority and Chief Customs-officer.*—(1) The Chief Customs-authority may of its own motion or otherwise call for and examine the record of any proceeding in which an officer of Customs has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may pass such order thereon as it thinks fit:

Provided that no order prejudicial to any person shall be passed under this section unless such person has been given a reasonable opportunity of making a representation against the proposed order.

(2) The powers conferred upon the Chief Customs-authority under sub-section (1) may also, in the like manner and subject to the like conditions, be exercised by the Chief Customs-officer in respect of any decision or order passed under this Act by any officer of Customs subordinate to him.”

**17. Substitution of new section for section 202 in Act VIII of 1878.**—For section 202 of the principal Act, the following section shall be substituted, namely:—

“202. *Custom-house agents to be licensed.*—(1) With effect from such date as the Central Government may, by notification in the Official Gazette specify, no person shall act as an agent for the transaction of any business relating to the entrance or clearance of any vessel or the import or export of goods or baggage in any custom-house unless such person holds a licence granted in this behalf in accordance with the rules made under sub-section (2).

(2) The Chief Customs-authority may make rules for the purpose of carrying out the provisions of this section and in particular, such rules may provide for—

(a) the authority by which a licence may be granted under this section and the period of validity of any such licence:

(b) the form of the licence and the fees payable therefor;

(c) the qualification of persons who may apply for a licence;

(d) the restrictions and conditions (including the furnishing of a security by the licensee for his faithful behaviour as regards the custom-house regulations and officers) subject to which a licence may be granted;

(e) the circumstances in which a licence may be suspended or revoked; and

(f) the appeals, if any, against an order of suspension or revocation of a licence, and the period within which such appeals shall be filed."

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### STATEMENT OF OBJECTS AND REASONS

The object of the Bill is—

(i) to place on a statutory basis certain existing practices relating to procedure which have been followed for a very long time and which have been found to be convenient both to the trade and to the Government;

(ii) to take certain additional powers which have been found to be necessary for the effective control of smuggling;

(iii) to make provision for the regulation of licensing of custom-house agents; and

(iv) to provide for review in certain circumstances by Customs-authorities of decisions of their subordinates.

The notes on clauses explain further the various provisions of the Bill.

A. C. GUHA.

NEW DELHI;

The 27th September, 1954.

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### Notes on Clauses.

Clause 2.—Section 43B of the Act makes provision for the grant of drawback of duty on the export of goods manufactured in India out of imported materials. This clause seeks to ensure that goods so exported do not get the further advantage of free entry under section 25 on subsequent reimportation into India.

Clause 3.—This clause inserts two new sections in the principal Act. The proposed section 29A places on a statutory basis the long-standing practice whereby in order to expedite clearance of imported goods the duty thereon is assessed and realised prior to their examination and not after examination as contemplated by section 31 of the Act.

Similarly the new section 29B places on a statutory basis the existing practice of assessing goods to duty provisionally when full information as regards their value is not immediately available so that the clearance of the goods is not held up. It also authorizes the Chief Customs-authority to make rules regulating the procedure in detail.

*Clause 4.*—The amendment made by this clause is consequential on the amendment made by clause 8.

*Clause 5.*—The amendment made by this clause is consequential on the insertion of new sections 29A and 29B by clause 3.

*Clause 6.*—The amendment made by this clause is consequential on the insertion of the new section 29B.

*Clause 7.*—This clause seeks to place on a statutory basis the existing practice of allowing a manifest to be submitted in advance of the ship's arrival, and thereby making it possible for bills of entry to be delivered in advance of the arrival of the goods and thus expediting clearance of goods.

*Clause 8.*—Section 86 of the principal Act provides that the bill of entry may be submitted only after the landing of the goods. But bills of entry are accepted as a matter of convenience prior to the arrival of the ship. The amendment places the practice on a statutory basis.

*Clause 9.*—This clause fixes a time limit of three months on the analogy of section 40, for claiming a refund of export duty on goods which are not subsequently shipped. In the absence of such a provision the whole of the export duty becomes non-refundable for failure to submit within time a short shipment notice required generally for statistical purposes.

*Clause 10.*—Sub-clause (a).—This sub-clause makes a consequential amendment providing for the punishment of persons failing to comply with the orders of a magistrate under the new section 170A inserted by clause 11 of the Bill.

Sub-clause (b).—This sub-clause makes a similar consequential amendment in respect of section 202 of the principal Act as proposed to be substituted by clause 17 of the Bill.

Sub-clause (c).—This sub-clause seeks to make smuggling of all kinds a criminal offence.

*Clause 11.*—This clause provides a remedy against a person who secretes smuggled goods inside his body. The clause empowers officer of Customs to produce such a person before a magistrate who may direct his body to be screened or X-rayed by a qualified radiologist. The clause further provides that if the X-ray picture reveals any secreted goods, suitable action may, in accordance with the order of the magistrate, be taken under the advice and supervision of a registered medical practitioner for bringing out such goods.

*Clause 12.*—This clause empowers certain officers of Customs to summon persons to give evidence and to produce documents, where necessary, in any enquiry which such officers may make in connection with the smuggling of goods.

*Clause 13.*—This clause enlarges the scope of section 172 so as to include within its ambit documents relating to smuggled goods.

*Clause 14.*—At present when action is taken against persons who are in possession of smuggled goods, it is not always easy for customs-authorities to prove that the goods are smuggled goods. This clause places the burden of proof in such cases on persons, from whose possession suspected smuggled goods are seized. Such a provision is necessary in order to safeguard the revenues of the State.

*Clause 15.*—This clause provides a safeguard against indiscriminate prosecutions for the new offence created under section 167(81) by requiring that no court shall take cognizance of any such offence except on a complaint in writing made by certain specially empowered and responsible officers.

*Clause 16.*—This clause empowers the Chief Customs-authority and the Chief Customs-officers to review cases on their own initiative in order to rectify errors of judgment prejudicial to revenue committed by subordinate officers.

*Clause 17.*—This clause provides for the regulation of licensing of custom-house agents and authorizes the Chief Customs-authority to make necessary rules in this behalf.

#### FINANCIAL MEMORANDUM

Clause 11 of the Bill seeks to provide for persons who secret smuggled goods inside their bodies being screened or X-rayed, and suitable action being taken for bringing out such goods. Sub-section (8) of the proposed section 170A provides that any expenditure incurred for the purpose of enforcing the provisions of that section (including fees payable to a radiologist or a registered medical practitioner) shall be defrayed by the Central Government. The expenditure which will be incurred as a result of the Bill passing into law is not expected to be considerable. In all probability it will be less than Rs. 1 lakh per annum.

#### EXPLANATORY MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill introduces a new section 29B in the Act, seeking to place on a statutory basis the existing practice of assessing goods to duty provisionally when full information as regards their value is not immediately available, so that clearance of the goods may not be held up. Sub-section (1) of the proposed section states that such provisional assessment shall be subject to the provisions of that section and any rules made thereunder. Sub-section (4) indicates the general scope of the rules that the Chief Customs-authority (that is, the Central Board of Revenue) may make for carrying out the provisions of the section.

2. Some of the more important matters in respect of which rules will be made are—

(a) the circumstances in which a provisional assessment may be made;

(b) the approximate basis on which a deposit of duty should be taken;

(c) the type of guarantee and security that the importer or exporter should furnish in cases where provisional assessment is made;

(d) the precautions to be taken for safeguarding Government revenue in such cases:

(e) the time limit for finalising provisional assessments and submission of documents:

(f) the action to be taken when the importers fail to take steps to have the assessment finalised, etc.

Instructions at present in force in the various custom-houses regarding provisional assessment will be consolidated and a uniform set of rules will be framed.

3. Clause 17 of the Bill seeks to substitute for the existing section 202 of the Act, dealing with custom-house agents a more elaborate section regulating licensing of such agents. The proposed section empowers the Chief Customs-authority (that is, the Central Board of Revenue) to make rules governing the conditions under which an agency licence may be issued, suspended or revoked.

4. There are at present no rules regulating the licensing of clearing agents. The general practice at custom-houses is to make an inquiry whether the applicant for a clearing agency (i) is likely to attract a minimum business, (ii) is financially sound, enjoying the credit of any reliable bank, (iii) is reliable enough to discharge his responsibilities to the department as well as to his clients. The rule-making power under the proposed section 202 of the Act (clause 17) would relate to the above matters as well as to certain other matters, such as, the authority by which a licence may be granted, the period of validity of such a licence, the nature of a bond that the agent may be required to furnish, the type of security to be furnished, the circumstances in which a licence may be suspended or revoked and appeals against an order suspending or revoking a licence.

5. It would thus appear that provisions relating to procedural matters regarding provisional assessments and licensing of custom-house agents would be detailed and lengthy and it would be unduly burdening the Act if they were to be included in the Act. It may be added that section 9(c) of the Act already empowers the Chief Customs-authority to make rules consistent with the Act for generally carrying out the provisions of the Act. The rule-making power proposed in clauses 3 and 17 is, therefore, normal and is not of an exceptional character.

M. N. KAUL,

*Secretary.*